

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 732 OF 2006

H. Vassanji & Company Petitioner

versus

Kamlesh Singh Harnamsingh Chowhan
and another

... Respondents.

Mr. Zubin Kamdin with H.A.Naronha for the petitioner.
Shri M. A. Shukla for the Respondents.

CORAM; P.V. KAKADE, J.

DATED; FEBRUARY 13, 2006.

P.C:

1. Heard both the sides.

2. Rule. Rule returnable forthwith.

3. This petition is preferred by the petitioner against the order dated 24-11-2005 passed by the Small Causes Court, Mumbai in Interim Notice No.4018 of 2004 in R.A.E. Suit No. 1041/1804 of 2002 discharging the notice with heavy costs of Rs. 5000/-.

4. It is apparent from the record that the present defendant took out the notice for deciding firstly the maintainability of the suit under Maharashtra Rent

Control Act 1999 challenging the relationship of landlord and tenant between the plaintiff and the defendant no.1. The plaintiff opposed the said notice. Hence the trial Judge adjudicated the issues and came to the conclusion that once the issues are framed and the recording of evidence had begun, and party is cross examined by the other side, the question of going back again to the initial stage for deciding the maintainability has no meaning and as such notice came to be discharged with a view that it was nothing but delaying tactic on the part of the defendant no.1.

5. It is clear from the record that the question whether the the point of maintainability of the suit had not come to the notice of defendant no.1 pending the suit and therefore notice was moved with a request that this issue can be raised and should be treated as preliminary issue.

6. After hearing both the parties and issuing the order of discharging the notice, I think the reasoning adopted by the learned trial Judge is totally erroneous. What is observed by him in the impugned order is once the issues are framed after completing of the pleadings and the evidence begins and the party is cross examined by the other side, then under that circumstances, question of going back again to the

initial stage for deciding the maintainability of the suit has no meaning at all and has come to the conclusion that this act and conduct on the part of the defendant no.1 is nothing but to prolong the litigation unnecessary.

7. In my considered view, the law is very clear on this point and issues can be raised on the basis of available pleadings as well as on the application of the parties regarding the disputed aspects which has bearing on the effective adjudication of the dispute between the parties. That could not be sufficient ground to raise the relevant issue which cannot be permitted.

8. Be that as it may the fact remains in the present case that the lower court did not go in the merits for the purpose of deciding the issue of maintainability of suit. However such issue can be raised at this stage and evidence can be led by both the parties on that issue also along with other issues. Therefore it is hereby directed that the trial court shall raise the issue regarding maintainability of suit on the ground mentioned in the notice by defendant no.1 and both the parties shall be given opportunity to lead their evidence, if any, on the said point along with other issues, which are being adjudicated in the suit itself.

It is clarified that the lower court need not go back to the question for the purpose of deciding the maintainability of the suit as a preliminary issue. Such issue can be incorporated as additional issue and can be adjudicated along with other issues between the parties. It is also directed that after framing such additional issue, the trial court shall give an opportunity to both the sides to lead evidence on this additional issue raised, as well as documentary if any and complete the adjudication of the entire suit within six months from the date of this order. Hence Rule is made absolute. The order dated 24-11-2005 is hereby set aside. The trial court is directed to act accordingly on the basis of observations made in the said order. With this direction the petition stands disposed of with no order as to costs.

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